United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

75-7694

In The

UNITED STATES COURT OF APPFALS
FOR THE SECOND CIRCUIT

Docket Nos. 75-7694
76-3003

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Plaintiff-Appellant,

v.

THE BOHACK CORPORATION,

Defendant-Appellee.

B/S

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

v.

HONORABLE JACOB MISHLER, CHIEF JUDGE
UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF NEW YORK,

Respondent.

Consolidated Appeal from the United States
District Court for the Eastern District of
New York and Petition for a Writ of Mandamus.

REPLY BRIEF OF PLAINTIFF-APPELLANT & PETITIONER

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TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

v.

HONORABLE JACOB MISHLER, CHIEF JUDGE
UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF NEW YORK,

Respondent.

REPLY BRIEF OF PLAINTIFF-APPELLANT & PETITIONER

POINT I

A. Prior Authorization by the Bankruptcy Court, Pursuant to Rule 919(b) Is Not Required to Submit Grievances Between the Parties Herein to the Committee

Bohack admits that it assumed the Agreement and that the disputes resulting from the subcontracting, transferring, leasing, assigning or conveying of its delivery work, to Bohack

stores, to other persons is "unquestionable arbitrable" and that it "is ready and willing to go to arbitration if the bankruptcy court grants the permission required by Rule 919(b)." (Bohack's brief, at 32-33). It is clear, however, that Rule 919(b) was never intended to apply to grievances arising between a signatory union and debtor in possession regarding the interpretation or application of the terms and conditions contained in an assumed executory labor agreement.

To be executory the labor agreement must require some future performance by the debtor in possession[1/] and the holder of such a contract with the debtor in possession is not a creditor until the contract has been rejected, with a resulting injury to the other party, In re Greenpoint Metallic Bed Co., Inc., 113 F. 2d 881 (2nd Cir. 1940), pursuant to the (a) permission of the bankruptcy court[2/] or (b) provisions contained in the arrangement.[3/] The rejection is a breach as of the date of filing the Chapter XI petition and an injured party thereto is then a creditor entitled to file a provable claim and to participate in the plan of

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1/ In re Grayson-Robinson Stores, Inc., 321 F. 2d 500 (2nd Cir. 1963); 8 Collier, Bankruptcy ¶ 3.15 (14th ed. Moore 1976).

2/ Section 313 (1) of the Bankruptcy Act, 11 U.S.C. §713(1).

3/ Section 353 of the Bankruptcy Act, 11 U.S.C. §753.

arrangement.[4/] U.S. Metal Products Co., Inc. v. United States, 302 F. Supp. 1263 (E.D.N.Y. 1969).

The contract cannot, however, be rejected in part and assumed in part. The debtor in possession is not free to retain the favorable features and reject the unfavorable ones. Assumption carries with it all the burdens as well as the benefits of the contract. In re Klaber Bros., Inc., 173 F. Supp. 83 (S.D. N.Y. 1959).

4/ There are two exceptions to the foregoing where a union may file preferred claims. First, a union may bring a preferred claim on behalf of the employees under the wage claim provision of the Bankruptcy Act (11 U.S.C. §104(a)(2) (1964). However, a wage claim may not exceed $600 to each claimant and must be for wages earned within three months before the date of the commencement of bankruptcy proceedings. Second, during the administration period, the union, on behalf of covered employees, is a preferred creditor where it is claiming wages earned during this period. In re Wil-Low Cafeterias, 111 F. 2d 429 (2nd Cir. 1940), construing 11 U.S.C. §104(a)(1) (1964), which provides in part:

> "The debts to have priority, in advance of the payment of dividends to creditors... shall be (1)...the costs and expenses of administration."

An object of a Chapter XI proceeding is to diminish the rights of creditors and their claims. Rule 919(b) is a vehicle available to the debtor in possession, a creditor and the bankruptcy court to resolve or compromise controversial claims arising in the settlement of the estate. No inference can be drawn, however, that Rule 919(b) gives the bankruptcy court power to abrogate a grievance procedure contained in a labor agreement assumed by a debtor in possession. The scope of Rule 919(b) was never intended to be so broad.

Both Bohack and Chief Judge Mishler have relied on In re Matter of Muskegon Motor Specialties Company, 313 F.2d 841 (6th Cir. 1963) and Johnson v. England, 356 F. 2d 44 (9th Cir. 1966) to support their erroneous argument against confirming the Committee's grievance award. These decisions are easily distinguishable on their facts from the issue before this Court. In neither Muskegon or Johnson was there an assumed executory labor agreement. In both cases the employers were adjudicated bankrupt and completely terminated their respective business.

In Muskegon the union claimed vacation pay for the former employees of the employer for a period beyond the termination of the employer's business. The employer refused the union's claim and the union demanded arbitration of the grievance. The employer rejected the demand and the union sued to compel arbitration. The employer, thereafter, filed a petition under

Chapter X of the Bankruptcy Act[5/] and a petition was filed for an order rejecting the executory provisions of the collective bargaining agreement. The Sixth Circuit found that since the labor agreement had expired and the employer's business was terminated, whatever legal claim the employees had for vacation pay was fixed and "could be better passed on by the [bankruptcy court] rather than an arbitrator."

In Johnson the dispute arose between the union and employer concerning the failure of the employer to provide a fund for the payment of pension benefits to its employees as required by the collective bargaining agreement. The employer had informed the union that it was going out of business and selling its assets. The union demanded that its grievance be submitted to arbitration and the employer refused. The union moved to compel arbitration and, thereafter, the employer filed a voluntary petition in bankruptcy, was subsequently adjudicated a bankrupt and the business was brought to an end. The Ninth Circuit made a clear distinction between those disputes involving a "currently operating employer" and those with a bankrupt employer with a completely terminated business. In the former the disputes "lend themselves most readily to solution through arbitration."

5/ 11 U.S.C. 501 et seq.

In the latter the "dispute concerns the allocation of corporate funds" and involve the "interests of parties who never consented to arbitration, namely, the trustee in bankruptcy and the general creditors."

In the instant case the debtor in possession assumed a viable labor agreement with Local 807, Bohack's operations are continuing and it is conceded that the grievance submitted to the Committee on May 12, 1975 was arbitrable.

Local 807 never contended that Rule 919(b) applied to labor grievances between the parties herein (Local 807's brief, 23-24). Tobin v. Plein[6/] and Schilling v. Canadian Foreign Steamship Co.[7/] have been cited solely to focus upon the limited discretion of the bankruptcy court where a contractual arbitration procedure exists for the resolution of claims between a creditor or debtor and a debtor in possession or trustee.

Local 807 was neither a creditor or debtor of Bohack and the issue presented to and decided by the Committee was not submitted "[o]n stipulation of the parties." The Committee heard a grievance between Local 807 and the debtor in possession and rendered its decision pursuant to the authority vested in it by the Agreement, to the terms of which both Local 807 and Bohack are bound.

6/ 301 F. 2d 378 (2nd Cir. 1962).

7/ 190 F. Supp. 462 (S.D.N.Y. 1961).

POINT I

B. The Committee Had Subject Matter Jurisdiction of the Dispute

The Local 807 grievance was submitted to the Committee in accordance with Article 7 of the Agreement.[8/] It called upon the Committee to make a factual determination as to whether or not Bohack was in violation of Article 32 in "using employees of Daitch Shopwell to deliver dairy and bakery products from Daitch Shopwell's warehouse to Bohack stores." Bohack argues that this grievance deals with "the question" of interpreting Article 32, but never clarifies what in Article 32 needed interpretation by the Committee in finding, as it did, a violation thereof. This Court should not speculate on "the question" that Bohack has failed to ask.

Assuming, arguendo, that the Committee, did interpret Article 32 in reaching its decision Bohack could have appealed that interpretation to the National Grievance Committee. That panel has "the authority to reverse and set aside the majority interpretation of...[the Committee], if, in its opinion, such interpretation is contrary to the provisions set forth in the [Agreement], in which case the decision of the National Grievance Committee shall be final and binding."[9/] Bohack also could have

---

8/ "Authorized representatives of the Union may file grievances alleging violation of the Agreement, under local grievance procedure, or as provided herein."

9/ Article 8, Section 3 of the Agreement (14a).

requested an interpretation by the National Grievance Committee before the May 12 hearing if it truly believed that Local 807's grievance required an interpretation of Article 32.[10/] Bohack need only have submitted that request "directly to the Joint Area Committee for the making of a record on the matter" after which that record would have been referred immediately to the National Grievance Committee for final and binding interpretation.[11/] No request for an interpretation of Article 32 nor appeal of the Committee's award was sought by Bohack.

With regard to Bohack's "bootstrap" special appearance argument (Bohack's brief, at 6) Local 807's only comment is that it is without basis in fact. Both Bohack and Local 807 offered testimony and other evidence to the Committee on May 12.[12/] This argument was raised and met by Local 807 before Bankruptcy Judge Parente on June 30, 1975 (100a-101a) and, he found that the award was null and void solely because of the failure to comply with Rule 919(b) (50a-52a).

The presiding Chairman of the Committee stated, at the outset of the May 12 proceeding, that subcontracting cases belong before the National Grievance Committee. However, this was not the decision of the seven member Committee in their executive

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10/ Article 8, Section 1 of the Agreement (12a).

11/ Ibid.

12/ Page 2 of the Committee's minutes of the May 12, 1975 hearing annexed hereto as Exhibit "A".

session. The Committee retained jurisdiction and decided this dispute. Bohack first raised this jurisdictional argument after it had appeared and participated in the May 12 hearing, to wit., on June 30, 1975 before Bankruptcy Judge Parente.

The Committee had subject matter jurisdiction of the dispute submitted to it and Chief Judge Mishler's order dismissing Local 807's petition to confirm that award was in error and should be reversed.

POINT II

A WRIT OF MANDAMUS SHOULD ISSUE

The issuance of the November 18, 1975 temporary restraining order was an order beyond the power of the District Court to issue and the denial of Local 807's motion to dissolve it did not convert it into an appealable preliminary injunction. This combination of lack of power to issue and extend the temporary restraining order, the repeated usurpation of non-existent judicial power by the District Court and the new and important questions involved herein warrant a review of this matter by mandamus.

As to the want of power, Section 4(a) and (e) of the Norris-LaGuardia Act[13/] provides that:

> "No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons

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13/ 29 U.S.C. 104(a) and (e).

> participating or interested in such dispute ...from doing whether singly or in concert, any of the following acts:
>
> (a) Cease or refusing to perform work or remain in any relation of employment;
>
> (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence..."

This flat denial of power to grant a strike injunction is lifted only to the limited extent of allowing a strike injunction to prohibit a breach of contract strike over a grievance subject to obligatory and determinative arbitration by agreement. Boys Markets v. Retail Clerks Union, 398 U.S. 235, 253-255 (1970). This narrow holding is emphasized by the conditions which must be satisfied before even such a limited strike injunction may be granted (id. at 253-254):

> "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. The dissenting opinion in Sinclair suggested the following principles for the guidance of the district court in determining whether to grant injunctive relief-principles that we now adopt:
>
> 'A District Court entertaining an action under §301 may not grant injunctive relief

> against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity - whether breaches are occurring and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.'
> 370 U.S. at 228 (emphasis in original.)"

The controversy in this case is quite different from that in Boys Markets. Local 807 brought its dispute with Bohack to the Committee and received an award on May 16, 1975, wherein the Committee ordered Bohack to "cease and desist, forthwith, from having its bargaining unit work subcontracted out" in violation of Article 32. Bohack refused to comply with the award and, on June 30, 1975, Local 807 exercised its contractual right to take economic action against

Bohack's recalcitrance.[14] The June 30, 1975 picketing involved a dispute which was expressly excepted from the no-strike provision of the Agreement. Furthermore, the covered employees returned to work immediately, and without incident, upon the service of Bankruptcy Judge Parente's invalid order on Local 807.[15] Bohack's truck drivers continued to work without incident until they were terminated on July 18, 1975, in violation of the Committee's award. Between June 30, 1975 and November 19, 1975 there was no interruption of Bohack's operations by Local 807 or any of Bohack's truck drivers. Neither has there been any incident subsequent to November 19, 1975.

Yet, if there were a strike in support of Local 807's position in this dispute it would be wholly outside the sphere of "a no strike over an arbitration grievance" (Boys Markets, 398 U.S. at 254), and §4 of the Norris-LaGuardia Act continues therefore to divest a federal court of power to enjoin such a strike. Accordingly, in this case, where the District Court's denial of the motion

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14/ Article 46, Section 1(i) of the Agreement (34a) provides:

> "Failure of any Joint Committee to meet without fault of the complaining side, refusal of either party to submit to or appear at the grievance procedure at any stage, or failure to comply with any final decision, withdraws the benefits of Article 8 and 46." (12a-15a, 32a-34a).

15/ The preliminary injunction order was vacated by Chief Judge Mishler on November 19, 1975 (129a).

to dissolve the temporary restraining order to be treated as a preliminary injunction prohibiting such a strike, it would constitute a strike injunction that "No court of the United States shall have jurisdiction to issue..." (§4, Norris-LaGuardia Act).

The Supreme Court's decision in Boys Markets does not dispense with, but emphasizes the need to consider, "whether issuance of an injunction would be warranted under the ordinary principles of equity..." (398 U.S. at 254). But it does more. It allows the issuance of a strike injunction only to prohibit a breach-of-contract strike over a grievance subject to obligatory and determinative arbitration by agreement. And "the employer should be ordered to arbitrate, as a condition of obtaining an injunction against the strike" id. at 254. In this case there has never been any hearing inquiring into the justifiability of the issuance of a Boys Markets injunction. The opportunity for a hearing is also a precondition to the issuance of a preliminary injunction. And the want of a hearing is especially egregious in view of the specific requirement of §7 of the Norris-LaGuardia Act. That section unequivocally provides that:

> "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered..."

Even if there were a dispute within the scope of Boys Markets, the limitations imposed by Sections 7, 8 and 9 upon the grant of a temporary restraining order would still obtain. Boys Markets lifts the restrictions of the Norris-LaGuardia Act only to the extent necessary to give effect to the exercise of equity jurisdiction to enjoin a breach of contract strike over a grievance subject to obligatory and determinative arbitration by agreement. The limitations of §7 of the Norris-LaGuardia Act on the grant of either a temporary restraining order or preliminary injunction in a labor dispute do not affect the efficacy of the grant of injunctive relief to enjoin a breach of contract strike over an arbitrable dispute and therefore continue in full force. Emery Air Freight Corp. v. Local Union No. 295, I.B.T., 449 F. 2d 586, 588 (2nd Cir. 1971).

In this case Chief Judge Mishler did not conduct a hearing. No witnesses were examined in support or opposition to the requested injunctive relief. The egregiousness of this default is emphasized by the express provisions of §7 of the Norris-LaGuardia Act. Plainly Chief Judge Mishler did not intend his denial of the motion to dissolve the temporary restraining order to be treated as a preliminary injunction. He wanted the rejection of the executory Agreement proceeding, pending before Bankruptcy Judge Parente, to be completed before he decided the motion for a preliminary injunction that was before him (172a). Bohack's counsel agreed that the preliminary

injunction hearing should not be conducted on November 26, but deferred until Bankruptcy Judge Parente rendered his decision on the questions remanded to him by Chief Judge Mishler's Memorandum of Decision and Order of November 19, 1975 (172a). If Chief Judge Mishler intended to issue a preliminary injunction he could easily have made that clear by conducting the hearing that was scheduled for November 26 and which was marked ready (170a). He did not do so and Bohack acquiesced in that decision. Local 807's unsuccessful effort to dissolve the temporary restraining order did not convert that order into a preliminary injunction. Granny Goose Foods, Inc. v. Teamsters, 415, U.S 423 (1974).

Chief Judge Mishler's ruling states no more than the order to show cause to dissolve the temporary restraining order was in all respects denied (200a). In view of his expressed desire to postpone the hearing on the preliminary injunction, the clear import of that ruling is that he did not intend it to be construed as the grant of a preliminary injunction.

The ex parte temporary restraining order was issued at 5:00 p.m. on November 18, 1975 (131a) and, in accordance with §7 of the Norris-LaGuardia Act, became void at the same time on November 24, 1975. Assuming, arguendo, that the November 18 order was valid, Chief Judge Mishler did not have the power, on November 26, to extend an order that had become void on November 24.

This Court has characterized an order extending temporary restraints, after a hearing has been held on a motion for a preliminary injunction, as being appealable. Pan American World Airways, Inc. v. Flight Engineers International Association, 306 F. 2d 840 (2nd Cir. 1962). Ordinarily, there can be no appeal from the issuance of a temporary restraining order. Grant v. United States, 282 F. 2d 165 (2nd Cir. 1960).

The hearing on a motion for a preliminary injunction, in the Pan American case, was held during the statutory period set forth in Rule 65(b).[16/] This is the appropriate procedure for a District Court to follow. Granny Goose, Inc. In neither the Pan American nor Granny Goose cases were the "void order" aspects of §7 of the Norris-LaGuardia Act considered. In the Pan American case there was a direction to the District Court to dissolve the existing injunction and in Granny Goose the union was found not to be in comtempt of an existing injunction. Therefore, neither the Second Circuit nor the Supreme Court was required to reach the issue of whether the five day limit of §7 of the Norris-LaGuardia Act should govern.

This case is distinguishable from Pan American since, in this case, no hearing for a preliminary injunction was ever heard and Local 807 had no reason to believe that a preliminary

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16/ Rule 65(b) of the Federal Rules of Civil Procedure provides that a temporary restraining order:

> "shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period."

injunction had been issued. Also, the continuation of a temporary restraining order beyond the period of statutory authorization does not, any longer, have the effect of a preliminary injunction and is not appealable within the meaning and intent of 28 U.S.C. §1292(a)(1). Granny Goose Foods, Inc. v. Teamsters.

Local 807 had no reason to believe that a preliminary injunction had been issued. On the contrary Chief Judge Mishler made it perfectly clear that he was deferring a hearing on that motion until Bankruptcy Judge Parente rendered a decision of the remanded issues. Judge Mishler believed that any request for a preliminary injunction would be moot once the Agreement was rejected by the Bankruptcy Court (172a, 177a, 198a). As stated by the Supreme Court in Granny Goose:

> "Where a hearing on a preliminary injunction has been held after issuance of a temporary restraining order, and where the District Court decides to grant the preliminary injunction, the appropriate procedure is not simply to continue in effect the temporary restraining order, but rather to issue a preliminary injunction, accompanied by the necessary findings of fact and conclusions of law."

CONCLUSION

1. For the foregoing reasons Plaintiff-Appellant and Petitioner request that a writ of mandamus be issued by this Court (1) directing the dissolution of Chief Judge Mishler's temporary restraining order; (2) staying Chief Judge Mishler's remand to the Bankruptcy Court of the issue whether Bohack should be required to submit itself to the grievance procedure contained in the Agreement and (3) compelling immediate submission of the disputes between Bohack and Local 807 to the Agreement's grievance procedure.

2. The Plaintiff-Appellant and Petitioner request that this District Court's judgment, entered in favor of Bohack and against Local 807, denying confirmation of the May 16, 1975 award be reversed and that judgment be entered in favor of Local 807 confirming that award.

Dated: Queens, New York
March 26, 1976

J. WARREN MANGAN, ESQ.
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32-43 49th Street
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NEW YORK CITY JOINT JOINT COMMITTEE
Locals 282-707-807 and 815
311 4th Avenue
New York, N. Y. 10003
674-4141

May 22, 1975

Minutes of Emergency Meeting held in the offices of New York State Motor Truck Association, May 12, 1975 (Case EM-574)

Present for the Employer were:

Pat Averett
Art Capella
Donald Ciapetti
Frank Scotto
Sal Stallone

Present for the Unions were:

John Canario - Local 816
Mick D'Allesandeo
Sal DeFranco " 807
John Hohmann - Local 807
Warren Mangan " 807
Leo Schwartz " 707

Case No. EM-574 - Local 807 vs Bohack Corporation - Violation Art. 32, Sec. 1, Para. 2 of the Rider Agreement.

Mr. Frank Scotto presided as Chairman.

The Chairman called the hearing to order at 3:00 p.m. and asked that the case be heard.

Appearing for the Union were Messrs. Warren Mangan and John Hohmann.

The Company was represented by Messrs. Joseph Binder, Executive Vice President, and Frank Knabel, Chairman of the Board.

The nature of the dispute is whether or not the Company is violating the contract by sub-contracting.

The Chairman asked if there had been discussions regarding the issue -- there had been, but could not come to any agreement. The Rider is not disagreement but fact - Article 32 (Subcontracting) is the issue. A letter dated May 2, 1975 was introduced and made part of the record -- this is the position of the Company. In the past, Filigree in New Jersey and Bonsulto's in Connecticut permitted 807 drivers to pick up at there warehouses and deliver to the stores was questioned.

EXHIBIT "A"

over.....

The Chairman stated cases of Subcontracting is an issue that belongs before the National Grievant machinery.

The Company's position is Bohack remains in Chapter VI and losses are at $50,000,000. First quarter an additional million. There are at present 88 stores. Krasdale management refuses to allow 807 men into there warehouse. The negotiated price is based on delivery to the stores. However, the same price is in effect if it is delivered to the warhouse. Bohack has no objection to using 807 but 138 will not permit.

The Union Steward states 146 men were on the list - November 1974, 29 men were laid off, in December 10 man were laid off. At present only 42 men are working and are delivering meats and dry good to 71 stores and the balance is being delivered by Daitch Shopwell.

The Union states, in summation, that this is their work and they asked the Committee to uphold the contract.

Following questioning, testimony and evidence presented by both sides, they were asked if they had received a full and fair hearing, to which, they responded affirmatively. The Committee then went into executive session.

The Committee in executive session ruled that:

"Based on the evidence and testimony presented in this instant case:

The Committee is constraint and has no alternative but to rule the Company is in violation of Article 32. Accordingly, the Company is ordered to cease and desist, forthwith, from having its bargaining unit work sub-contracted out which is violative of said Article."

Having no further business to conduct the meeting was adjourned.

SAL DeFRANCO
Union Co-Chairman

FRANK SCOTTO
Employer Co-Chairman

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.:

Rose Henry, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 32-43 49th Street, Long Island City, New York. On the 29th day of March, 1976 deponent served the within reply brief upon Kelley, Drye & Warren, Esqs., attorneys for The Bohack Corporation, at 350 Park Avenue, New York, New York, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Rose Henry
Rose Henry

Sworn to before me this
29th day of March, 1976

J. Warren Mangan

J. WARREN MANGAN
NOTARY PUBLIC, State of New York
No. 31-2504951
Qualified in Westchester County
Certificate filed in Queens County
Term Expires March 30, 1977